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SENATE BILL 109

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Kent L. Cravens

AN ACT

RELATING TO DRIVING WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR OR DRUGS; REQUIRING JUVENILE OFFENDERS TO OBTAIN AN INTERLOCK IGNITION DEVICE FOR ONE YEAR AFTER A DWI OR AN OFFENSE RELATING TO DRUGS OR ALCOHOL; RECONCILING MULTIPLE AMENDMENTS FROM LAWS 2003.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 32A-2-19 NMSA 1978 (being Laws 1993, Chapter 77, Section 48, as amended by Laws 2003, Chapter 225, Section 10 and by Laws 2003, Chapter 239, Section 5) is amended to read:

"32A-2-19. DISPOSITION OF AN ADJUDICATED DELINQUENT OFFENDER. --

A. At the conclusion of the dispositional hearing, the court may make and include in the dispositional judgment

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1 its findings on the following:

2 (1) the interaction and interrelationship of  
3 the child with the child's parents, siblings and any other  
4 person who may significantly affect the child's best interests;

5 (2) the child's adjustment to [~~his~~] the  
6 child's home, school and community;

7 (3) the mental and physical health of all  
8 individuals involved;

9 (4) the wishes of the child as to [~~his~~] the  
10 child's custodian;

11 (5) the wishes of the child's parents as to  
12 the child's custody;

13 (6) whether there exists a relative of the  
14 child or other individual who, after study by the department,  
15 is found to be qualified to receive and care for the child;

16 (7) the availability of services recommended  
17 in the predisposition report; and

18 (8) the ability of the parents to care for the  
19 child in the home.

20 B. If a child is found to be delinquent, the court  
21 may impose a fine not to exceed the fine that could be imposed  
22 if the child were an adult and may enter its judgment making  
23 any of the following dispositions for the supervision, care and  
24 rehabilitation of the child:

25 (1) any disposition that is authorized for the

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1 disposition of a neglected or abused child, in accordance with  
2 the Abuse and Neglect Act;

3 (2) transfer legal custody to the department,  
4 an agency responsible for the care and rehabilitation of  
5 delinquent children, which shall receive the child at a  
6 facility designated by the secretary of the department as a  
7 juvenile reception facility. The department shall thereafter  
8 determine the appropriate placement, supervision and  
9 rehabilitation program for the child. The judge may include  
10 recommendations for placement of the child. Commitments are  
11 subject to limitations and modifications set forth in Section  
12 32A-2-23 NMSA 1978. The types of commitments include:

13 (a) a short-term commitment of one year,  
14 followed by a period of parole for ninety days;

15 (b) a long-term commitment for no more  
16 than two years in a long-term facility for the care and  
17 rehabilitation of adjudicated delinquent children;

18 (c) if the child is a delinquent  
19 offender who committed one of the criminal offenses set forth  
20 in Subsection I of Section 32A-2-3 NMSA 1978, a commitment to  
21 age twenty-one, unless sooner discharged; or

22 (d) if the child is a youthful offender,  
23 a commitment to age twenty-one, unless sooner discharged;

24 (3) place the child on probation under those  
25 conditions and limitations as the court may prescribe;

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1 (4) place the child in a local detention  
2 facility that has been certified in accordance with the  
3 provisions of Section 32A-2-4 NMSA 1978 for a period not to  
4 exceed fifteen days within a three hundred sixty-five day time  
5 period;

6 (5) if a child is found to be delinquent  
7 solely on the basis of Paragraph (3) of Subsection A of Section  
8 32A-2-3 NMSA 1978, the court shall only enter a judgment  
9 placing the child on probation or ordering restitution or  
10 imposing a fine not to exceed the fine that could be imposed if  
11 the child were an adult or any combination of these  
12 dispositions; or

13 (6) if a child is found to be delinquent  
14 solely on the basis of Paragraph (2), (4) or (5) of Subsection  
15 A of Section 32A-2-3 NMSA 1978, the court may make any  
16 disposition provided by this section and may enter its judgment  
17 placing the child on probation and, as a condition of  
18 probation, transfer custody of the child to the department for  
19 a period not to exceed six months without further order of the  
20 court; provided that this transfer shall not be made unless the  
21 court first determines that the department is able to provide  
22 or contract for adequate and appropriate treatment for the  
23 child and that the treatment is likely to be beneficial.

24 C. When the child is an Indian child, the Indian  
25 child's cultural needs shall be considered in the dispositional

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1 judgment and reasonable access to cultural practices and  
2 traditional treatment shall be provided.

3 D. No child found to be delinquent shall be  
4 committed or transferred to a penal institution or other  
5 facility used for the execution of sentences of persons  
6 convicted of crimes.

7 E. Whenever the court vests legal custody in an  
8 agency, institution or department, it shall transmit with the  
9 dispositional judgment copies of the clinical reports,  
10 predisposition study and report and other information it has  
11 pertinent to the care and treatment of the child.

12 F. Prior to any child being placed in the custody  
13 of the department, the department shall be provided with  
14 reasonable oral or written notification and an opportunity to  
15 be heard.

16 G. In addition to any other disposition pursuant to  
17 this section or any other penalty provided by law, if a child  
18 fifteen years of age or older is adjudicated delinquent on the  
19 basis of Paragraph (2), (4) or (5) or Subparagraph (a) of  
20 Paragraph (1) of Subsection A of Section 32A-2-3 NMSA 1978, the  
21 child's driving privileges [~~may~~] shall be denied or the child's  
22 driver's license [~~may~~] shall be revoked for a period of [~~ninety~~  
23 ~~days. For a second or a subsequent adjudication, the child's~~  
24 ~~driving privileges may be denied or the child's driver's~~  
25 ~~license revoked for a period of~~] one year. Within twenty-four

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1 hours of the dispositional judgment, the court [~~may~~] shall send  
2 to the motor vehicle division of the taxation and revenue  
3 department the order adjudicating delinquency. Upon receipt of  
4 an order from the court adjudicating delinquency, the director  
5 of the motor vehicle division of the taxation and revenue  
6 department [~~may~~] shall revoke or deny the delinquent's driver's  
7 license or driving privileges. Nothing in this section may  
8 prohibit the delinquent from applying for [~~a limited driving~~  
9 ~~privilege pursuant to Section 66-5-35 NMSA 1978 or~~] an ignition  
10 interlock license pursuant to the Ignition Interlock Licensing  
11 Act; [~~and~~] provided that the license is further restricted by  
12 requiring the ignition interlock device to detect, at a  
13 minimum, an alcohol concentration of two one hundredths in the  
14 delinquent's blood or breath. Nothing in this section  
15 precludes the delinquent's participation in an appropriate  
16 educational, counseling or rehabilitation program

17 H. In addition to any other disposition pursuant to  
18 this section or any other penalty provided by law, when a child  
19 is adjudicated delinquent on the basis of Paragraph (7) of  
20 Subsection A of Section 32A-2-3 NMSA 1978, the child shall  
21 perform the mandatory community service set forth in Section  
22 30-15-1.1 NMSA 1978. When a child fails to completely perform  
23 the mandatory community service, the name and address of the  
24 child's parent or legal guardian shall be published in a  
25 newspaper of general circulation, accompanied by a notice that

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1 he is the parent or legal guardian of a child adjudicated  
2 delinquent for committing graffiti."

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